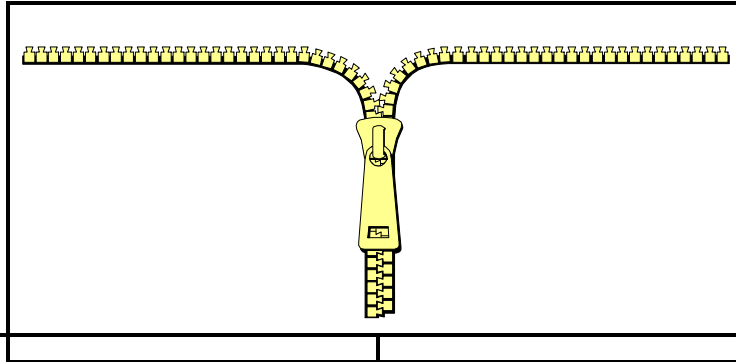


PUBLIC EMPLOYEE RIGHTS DURING INTERROGATION AND INTERVIEW

Employer must choose. Statements under threat of
dismissal cannot be used in criminal prosecution.
Garrity v. New Jersey, 385 US 493 (1967).



CRIMINAL INTERROGA TION	DISCIPLINA RY INTERVIEW
Absolute 5th Amendment right to silence, <u>Miranda v. Arizona</u> , 384 US 436 (1966).	No right to silence; refusal to answer usually results in charge of insubordination and dismissal.
Absolute 6th Amendment right to an attorney during interrogation, <u>Escobedo v. Illinois</u> , 378 US 478 (1964).	Qualified right to Union representation during disciplinary interview: Private Sector: <u>NLRB v. Weingarten, Inc.</u> , 420 US 251 (1975). Federal Sector: 5 USC 7114(a)(2)(B), Statutory <u>Weingarten</u> . Public Sector: Varies, often in statute, case law or contract.
Absolute 6th Amendment right to an attorney during all phases of criminal prosecution, even if defendant cannot afford an attorney, state must provide, <u>Gideon v. Wainwright</u> , 372 US 335 (1963).	Duty of Fair Representation: the certified exclusive representative must represent all employees in the bargaining unit regardless of membership. (Even though the bargaining unit employee has not "paid" for the service, the employee is entitled to representation).

CONSTITUTIONAL RIGHTS SUMMARIZED

- 1) As a matter of constitutional law, any statement given by public employees, based on a threat of dismissal from their job if they fail to respond, will be inadmissible against the employee in a subsequent criminal proceeding.
- 2) Public employees being questioned, in any proceeding about a matter that could result in a criminal prosecution against them, may not be dismissed solely for invoking their fifth amendment privilege and refusing to answer or for refusing to sign a waiver of immunity.
- 3) Public employees do have an obligation to answer the Employer's work related inquiries. Therefore, if employees are assured that their answers or information obtained as a result of those answers cannot be used against them in a criminal proceeding, and that they may be disciplined or dismissed for failure to respond, then they may properly be disciplined or dismissed for any refusal to answer work related questions.
- 4) Conversely, questions directed at employees' personal activities, not affecting on-duty performance, need not be answered.

NEXUS

Summary paragraph 4) above, presents the greatest problems for public employers, public employees, arbitrators and the courts. Typically, the public employers often make inquiries about the employees off-duty misconduct which may impact the job. Such Inquiries are permissible if there is a *nexus*, a relationship, between the off-duty misconduct and the employee's job. However, the concept of nexus is highly elastic. Consequently, the cases vary widely and the range of off-duty misconduct which can become the subject of public employers' inquiries and subsequent discipline is nearly infinite.

MIRANDA WARNINGS

- 1. You have the right to remain silent. You are not required to say anything to us at any time or to answer any questions. Anything you say can and will be used against you in court.**
- 2. You have the right to talk to a lawyer for advice before we question you and to have a lawyer with you during questioning.**
- 3. If you cannot afford a lawyer and want one, a lawyer will be provided to you free of charge.**
- 4. If you want to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.**

KALKINES WARNING

I want to advise you that you have the right to remain silent, although you may be subject to disciplinary action for the failure to answer material and relevant questions relating to the performance of your duties as an employee of the Bureau of Engraving and Printing.

I further advise you that the answers you give to these questions or any evidence gained by reason of your answers may not be used against you in a criminal proceeding, except that you may be subject to criminal prosecution for any false answer that you may knowingly give under any applicable law, including Section 1001, U.S.C., Title 18. It may also be used for disciplinary action, including action for giving false answers. If you wish to leave, you are free to leave at any time.